

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Alabama Bioenergy, LLC)

aka Eagle Biofuel)

Bridgeport, Jackson County, Alabama)

SID PERMIT No. IU 08-36-00445)

ORDER NO. - -WP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.), the ADEM Administrative Code of Regulations (“hereinafter, “ADEM Admin. Code R.”) promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, the Alabama Department of Environmental Management (hereinafter, “the Department”) makes the following FINDINGS:

1. Alabama Bioenergy, LLC, (hereinafter, “the Permittee”) operates a biodiesel facility also known as Eagle Biofuel (hereinafter, “the Facility”) located at 311 Edmonds Avenue, in the City of Bridgeport, Jackson County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.).

4. The Department issued a State Indirect Discharge (hereinafter, "SID") Permit Number IU 08-36-00445 (hereinafter, "the Permit") to the Permittee on May 3, 2007, establishing limits on the discharge of pollutants from such point source, designated therein as outfall DSN001S into the City of Bridgeport's Waste Water Treatment Lagoon (hereinafter "the Lagoon"). The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports (hereinafter, "DMRs") to the Department describing the results of the monitoring. The Permit also requires that the Permittee maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit.

5. Ala. Code §§ 22-22-9(i)(3) (2006 Rplc. Vol.) and ADEM Admin. Code r. 335-6-6-.03 require that no person shall discharge pollutants into waters of the state without first having obtained a valid National Pollutant Discharge Elimination System (hereinafter, "NPDES") permit or coverage under a valid General NPDES permit.

6. Ala. Code §§ 22-22-9(i)(3) (2006 Rplc. Vol.) and ADEM Admin. Code r. 335-6-6-.03 (2) require that no person, required to apply for a storm water discharge permit by 40 C.F.R. § 122.26 (2000), shall discharge pollutants into waters of the state without first having applied for a valid NPDES permit. Federal Regulation 40 C.F.R. § 122 (2000), requires industries engaged in certain industrial activities to submit an application for an NPDES permit for storm water discharges. The bulk petroleum industry, which includes biodiesel operations, is an industry regulated under 40 C.F.R. § 122 (2000).

7. The Permittee has failed to apply to the Department for a storm water discharge permit pursuant to Ala. Code §§ 22-22-9(i)(3) (2006 Rplc. Vol.), ADEM Admin. Code r. 335-6-6-.03 and 40 C.F.R. § 122.26 (2000).

8. The Department conducted inspections at the Facility on May 7, 2008, August 12, 2008, March 9 through 10, 2009, and March 11, 2009.

9. Based on visual observations during the inspections, the Department noted that excessive amounts of oil and grease had been spilled or discharged on-site, and there was evidence that some of the material had been discharged off-site via a culvert that leads to the

Tennessee River, a water of the state. The discharge of pollutants to a water of the state without a permit is a violation of Ala. Code §22-22-9(i)(3) (2006 Rplc. Vol.).

10. On March 3, 2009, the Department received a complaint of a discharge of glycerin and oil into a drainage ditch which flows to the Tennessee River, a water of the state, from the Facility. The discharge was reported to have occurred during heavy rains on and about February 27, 2009. During the March 9, 2009, inspection to investigate the reported discharge, the Department observed and discussed with the Facility owner, a pipe failure that allowed wastewater to be released into a storm water outlet off-site that leads to the Tennessee River, a water of the state. In addition, the Department noted that a berm to a reservoir area used to hold "soap material" had failed and the material also discharged to a storm water outlet off-site that leads to the Tennessee River, a water of the state. The discharge of pollutants to a water of the state without a permit is a violation of Ala. Code §22-22-9(i)(3) (2006 Rplc. Vol.).

11. The Departments records indicate that the Permittee did not provide either the 24-hour verbal or five-day written notification to the Department of the discharges described in Paragraphs 9. and 10. above as required by Part I.F.2.a. of the Permit.

12. Based on a review of available on-site records during inspections, the Department noted that the Permittee violated of Part I.E. of the Permit by failing to maintain chains of custody for some sampling events and by not keeping a written log of the pH calibration. In addition, the Department noted that the Permittee violated 40 C.F.R. § 112 (2000) and Part I.E. of the Permit by not using proper sample collection containers and proper preservation techniques.

13. Based on visual observations during the inspections conducted by the Department, the Permittee had several 55 gallon drums and large plastic tanks onsite at the Facility which had no secondary containment. The failure to provide appropriate secondary containment to insure that no discharge from a primary containment system, such as a tank, will escape the containment system before cleanup occurs is a violation of 40 C.F.R. § 112 (2000).

14. Part I.H.1. of the Permit states that the Permittee is required to submit a Baseline Monitoring Report (hereinafter, "BMR") 90 days after the issuance date of the Permit. The BMR must contain the information required under 40 C.F.R. § 403.12(b)(1) through 40 C.F.R. § 403.12(b)(7).

15. The Permittee failed to submit the BMR to the Department as required by Part I.H.1. of the Permit.

16. The Permittee failed to submit to the Department DMRs during the months of December 2007, February 2008 through June 2008, August 2008, October 2008 through December 2008, and January 2009 through September 2009. Each failure to submit a DMR is a violation of the Permit.

17. The Permittee failed to report to the Department the monthly and weekly averages for flow parameter on the DMRs submitted for the months of January 2008, and July 2008. In addition, all of the submitted DMR forms were incorrectly completed, not original versions, and did not bear original signatures. Each failure to report a permitted parameter and each failure to submit original reports with original signatures is a violation of the Permit.

18. On March 23, 2009, the Department issued a Notice of Violation (hereinafter, "NOV") to the Permittee addressing the violations cited in Paragraphs 9, 12, 13, 15, 16, and 17 above. The NOV required the Permittee to submit no later than 30 days after receipt of the NOV, a report prepared by an engineer registered and authorized to practice in Alabama describing the steps that have been taken to correct the violations and deficiencies listed in the NOV. The report was also required to include the Permittee's Spill Prevention, Control, and Countermeasures (hereinafter, "SPCC") Plan, BMR, and all previously delinquent DMRs. The Permittee was required to submit the response to the Department on or before April 26, 2009.

19. The NOV also required that the Permittee submit to the Department within 90 days receipt, a Best Management Practices ("hereinafter, "BMP") Plan and a complete storm water permit application and fee. The BMP Plan must include the Permittee's strategy for containment of any or all process liquids or solids in a manner such that these materials do not present a significant potential for discharge.

20. The Permittee failed to provide a complete response to the NOV. The failure to submit the documents required by the NOV is a violation of Ala. Code §§ 22-22-9(c) (2006 Rplc. Vol.) and ADEM Admin. Code r. 335-6-5-.15 (8).

21. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.) in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the Permittee; the economic benefit which delayed compliance may confer upon the Permittee; the nature, extent and degree of success of the Permittee's efforts to minimize or mitigate the effects of such violation upon the environment; the Permittee's history of previous violations; and the ability of the Permittee to pay such penalty. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Permittee's violations consist of the failure to apply for an NPDES storm water discharge permit, the unpermitted discharge of pollutants to a water of the state on multiple occasions, the failure to provide notification of unpermitted discharges, the failure to maintain records as required by the Permit, the failure to use proper sample collection and preservation techniques, the failure to provide appropriate secondary containment to insure no discharge from a primary containment system will escape the containment system before cleanup occurs, the failure to submit a BMR, the failure to submit DMRs as required by the Permit, the failure to monitor and report the flow parameter as required by the Permit, and the failure to respond to an NOV issued by the Department. The Department has no evidence of irreparable harm to the environment or to the health and safety of the public as a result of these violations.

B. THE STANDARD OF CARE: The Permittee failed to maintain in good working order all systems used by it to achieve compliance with the terms and conditions of the Permit, and state and federal regulations.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if there has been a significant

economic benefit conferred by the delay of compliance with the Permit requirements or state and federal regulations. However, by failure to obtain the appropriate permit, conduct the appropriate sampling and analysis, or develop and submit the appropriate reports, the Permittee did not incur fees and costs associated with these processes.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects as a result of the violations described herein.

E. HISTORY OF PREVIOUS VIOLATIONS: Prior to the time addressed by this Order, the Permittee discharged pollutants to the collection system to the Lagoon in exceedance of parameter limitations established by Part I.A. of the Permit. The Permittee failed to provide a written report of the exceedances as well as failed to resample the parameters, test the samples, and report the results as required by the Permit. Also, prior to the time addressed by this Order, the Department issued two NOVs to the Permittee for failure to submit several DMRs, as required by the Permit. The Permittee failed to provide a written response to one of these NOVs.

F. THE ABILITY TO PAY: The Department has taken into consideration all of the information submitted by the Permittee regarding ability to pay.

G. OTHER FACTORS: Generally, the violations fell into nine broad categories of 1) discharging without a permit, 2) failure to maintain adequate monitoring records, 3) failure to prepare BMP/SPCC Plan, 4) failure to implement adequate BMPs/SPCCs, 5) failure to notify the Department of unpermitted discharges, 6) failure to submit BMR, 7) failure to respond to NOV, 8) failure to monitor in accordance with the Permit and 9) failure to submit DMRs. These violations have historically received penalty amounts of 1) \$100 to \$2,000, 2) \$100 to \$500, 3) \$100 to \$750, 4) \$100 to \$2,500, 5) \$100 to \$2,000, 6) \$100 to \$500, 7) \$100 to \$1,000, 8) \$100 to \$500, and 9) \$100 to \$500, respectively.

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-10, 22-22A-5(12), 22-22A-5(18), and 22-22-9(i) (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, not later than forty-five days after receipt of this Order, the Permittee shall pay to the Department a civil penalty in the amount of \$2,800.00 for the violations stated herein.

B. That all penalties due pursuant to this Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. That the Permittee shall prepare and submit to the Department so that it is received not later than 90 days after the issuance date of this Order, an Engineering Report that identifies the potential causes of noncompliance and that summarizes an investigation of the changes necessary for the Permittee to implement to achieve compliance with the Permit and state and federal regulations. The Engineering Report shall include a schedule for implementation (i.e., a Compliance Plan). At a minimum, the Permittee's Engineering Report shall address the need for changes in maintenance and operating procedures, the need for modification of existing treatment works, and the need for new or additional treatment works. Alternatively, the Engineering Report shall include a Compliance Plan to eliminate all discharges and potential discharges of pollutants from the Facility to a collection system or water of the state. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the submittal is not sufficient to accomplish compliance with the Permit or state and federal regulations, then the Permittee shall modify the Engineering Report so that it does accomplish compliance. Modifications to the Engineering Report, if required, shall be submitted to the Department so that they are received

no later than 30 days after receipt of the Department's comments. The Permittee shall complete implementation of the recommendations provided in the Engineering Report not later than 180 days after the issuance date of this Order.

D. That, upon the Department's request, the Permittee shall prepare and submit detailed Progress Reports to the Department describing the Permittee's progress towards achieving compliance with the items presented in the Compliance Plan.

E. That the Permittee shall submit to the Department so that it is received not later than 45 days after issuance of this Order, a certification of no exposure (EPA Form 3510-11) or a complete NPDES permit application including applicable fees to address storm water discharges to waters of the state.

F. That, not later than 180 days after issuance of this Order, the Permittee shall comply with the Oil and Grease and Biochemical Oxygen Demand limitations of SID Permit Number IU08-36-00445. The Permittee shall comply with all other terms, conditions, and limitations of its SID Permit immediately upon receipt of this Order.

G. That this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

H. That final approval and issuance of this Order are subject to the requirement that the Department provide notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the proposed Order.

I. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and, therefore, unenforceable, the remaining provisions hereof shall remain in full force and effect.

J. That, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

K. That the issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Permittee for the violations cited herein.

L. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Permittee for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____.

Onis "Trey" Glenn, III
Director